

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: A7736

Frank AMONG, et al.

Appln. No.: 10/031,405

Group Art Unit: 3628

Patent No.: 7,574,372

Issued: August 11, 2009

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Examiner: Igor N. BORISSOV

Filed: January 18, 2002

For: METHODS AND APPARATUS FOR MANAGING A TOUR PRODUCT PURCHASE

**REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)**

MAIL STOP PATENT EXTENSION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests reconsideration of the Director's determination of the revised patent term adjustment (PTA) communicated in the Issue Notification mailed July 22, 2009, for U.S. Patent No. 7,574,372 ('372 Patent). In particular, Applicant requests the correction of the PTA from 464 days, as indicated in the Issue Notification, to 914 days, as discussed below.

In accordance with 37 C.F.R. § 1.705(d), this Request for Reconsideration of the Patent Term Adjustment ("Request") is being filed within two months of the Patent Issue date and, therefore, is timely filed. The Director is authorized to charge Applicant's Deposit Account 19-4880 for the required fee as specified in 37 C.F.R. § 1.18(e) (\$200.00).

As required by § 1.705(b)(2), a Statement of the Facts is set forth below.

I. STATEMENT OF THE FACTS

A. The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment

Pursuant to §§ 1.703(a) and (b) and § 1.704(b), Applicant submits that the total correct patent term adjustment for the '372 Patent should be 464 days plus the amount of days (450) beginning on the date following the fourteen months after the date on which the requirements of 35 U.S.C. § 371 in this Application were fulfilled (January 18, 2002) and ending on the date of mailing an action (June 10, 2004).

In Table A below, Applicant illustrates the relevant dates and delays attributable to the USPTO and Applicant under 37 C.F.R. §§ 1.703 and 1.704, respectively. The transaction history of the present application is reported in PAIR, which shows all of the dates on which transactions took place in the '372 Patent including dates which are not relevant to the PTA determination. A copy of the PAIR report is attached as Appendix to this paper.

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Table A

Date	Event	USPTO Delay (and relevant section of the CFR)	Applicant Delay (and relevant section of the CFR)
8-11-2009	Application issues as a patent	1390 days (§ 1.703(a)(b))	476 days (§ 1.704(b))
1-23-2009	Mail date of final Office Action	8 days (§ 1.703(a))	31 days (§ 1.704(b))
9-15-2008	Applicant files response to non-final Office Action		
5-15-2008	Mail date of non-final Office Action		
2-19-2008	Applicant files response to Restriction Requirement		31 days (§ 1.704(b))
10-19-2007	Mail date of Restriction Requirement		
8-08-2007	Date ending the measurement of USPTO delay under 37 C.F.R. § 1.703(b)	932 days (§ 1.703(b))	91 days (§ 1.704(b))
8-08-2007	Applicant files Request for Continued Examination	↑	
2-9-2007	Mail date of final Office Action	↑	
11-20-2006	Applicant files response to non-final Office Action	↑	94 days (§ 1.704(b))
5-18-2006	Mail date of non-final Office Action	↑	

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10-28-2005	Applicant files corrective response to non-final Office Action	↑	109 days (§ 1.704(c)(8))
7-11-2005	Applicant files informal response to non-final Office Action	↑	30 days (§ 1.704(b))
3-11-2005	Mail date of non-final Office Action	↑	
1-19-2005	Date triggering the beginning measurement of USPTO delay under 37 C.F.R. § 1.703(b)	↑	
12-9-2004	Applicant files response to Restriction Requirement	450 days (§ 1.703(a))	90 days (§ 1.704(b))
6-10-2004	Mail date of Restriction Requirement		
1-18-2002	Present application completes § 371 requirements		

B. Delay attributable to the USPTO (the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought)

Applicant respectfully submits that the total delay attributable to the USPTO under 37 C.F.R. § 1.703 is 1390 days.

The delay attributable to the USPTO stems from (1) a delay of 450 days under 37 C.F.R. § 1.703(a)(1); (2) a delay of 932 days under 37 C.F.R. § 1.703(b); and (3) a delay of 8 days 37 C.F.R. § 1.703(a)(2). Regarding the 450 day delay, Applicant notes that the present application fulfilled the requirements of 35 U.S.C. § 371 on January 18, 2002. However, the first Office Action did not issue until June 10, 2004. 37 C.F.R. § 1.702(a)(1) specifies that USPTO delay will be calculated as “[t]he number of days...in the period beginning on the day after the date that is fourteen months after the date on which the application ... fulfilled the requirements

of 35 U.S.C. § 371 and ending on the date of mailing ... an action under 35 U.S.C. 132.” 450 days passed between the fourteen-month anniversary of the fulfillment of the requirements of 35 U.S.C. § 371 (January 18, 2002) and the date that the June 10, 2004 Office Action was mailed. Accordingly, this period accounts for 450 days of the USPTO delay.

The second USPTO delay of 932 days is attributable to 37 C.F.R. § 1.703(b), which specifies that USPTO delay includes “the number of days...in the period beginning on the day after the date that is three years after the date on which the...national stage commenced under 35 U.S.C. § 371(b) or (f) in an international application and ending on the date that the patent was issued, but not including ... [t]he number of days ... in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.”

Accordingly, the second period of the USPTO delay under 37 C.F.R. § 1.703(b) began the day after January 18, 2005 and ended on the date a request for continued examination was filed (August 8, 2007) and is 932 days.

The third USPTO delay of 8 days is attributable to 37 C.F.R. § 1.703(a)(2), which specifies that USPTO delay includes “the number of days...in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing ... an action under 35 U.S.C. 132.” Accordingly, this period of the USPTO delay began the day after January 15, 2009 and ended on January 23, 2009 when the Office Action was mailed.

None of the USPTO delay under 37 C.F.R. §§ 1.703(a)(1), 1.703(a)(2), and 1.703(b) overlap with each other, and thus the total amount of the USPTO delay is the sum of the delays under each of these sections, consistent with *Wyeth v. Dudas*. 580 F. Supp. 2d 138 (Dist. D.C., September 30, 2008). In *Wyeth*, the court rejected the USPTO’s position that the entire period during which an application is before the USPTO is considered to be part of the period of time under § 1.703(b) for purposes of determining overlap with § 1.703(a).

The court held that “[t]he only way that periods of time can ‘overlap’ is if they occur on the same day.” *Id.* at 141. Here, the period of delay attributable to the USPTO under § 1.703(a)(1) does not overlap the period of delay under § 1.703(b) because the § 1.703(a)(1) delay occurs in its entirety prior the January 19, 2005 date that triggers the start of the time period under § 1.703(b). Further, the period of delay attributable to the USPTO under § 1.703(a)(2) does not overlap the period of delay under § 1.703(b) because the § 1.703(a)(2) delay occurs in its entirety after the August 8, 2007 date that ends the time period under § 1.703(b).

Thus, there is no calendar day that has been counted as both delay under § 1.703(b) and delay under § 1.703(a).

Accordingly, Applicant respectfully submits that the delay attributable to the USPTO under 37 C.F.R. § 1.703 in the ‘372 Patent is 1390 days.

C. Delay attributable to Applicant (any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination as set forth in § 1.704)

Applicant respectfully submits that the total delay attributable to Applicant under 37 C.F.R. § 1.704 is 476 days. This delay stems from (1) a 90 day delay between the USPTO’s mailing of the June 10, 2004 Office Action and Applicant’s response; (2) a 30 day delay between the USPTO’s mailing of the March 11, 2005 Office Action and Applicant’s response; (3) a 109 day delay between the Applicant’s filing of informal Amendment on July 11, 2005 and Applicant’s filing of corrective Amendment; (4) a 94 day delay between the USPTO’s mailing of the May 18, 2006 Office Action and Applicant’s response; (5) a 91 day delay between the USPTO’s mailing of the February 9, 2007 Office Action and Applicant’s response; (6) a 31 day delay between the USPTO’s mailing of the October 19, 2007 Office Action and Applicant’s response; and (7) a 31 day delay between the USPTO’s mailing of the May 15, 2008 Office Action and Applicant’s response.

Regarding the Applicant’s delays under 37 C.F.R. § 1.704(b), this section states that Applicant incurs delay equal to the “cumulative total of any periods of time in excess of three

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months that are taken to reply to any notice or action by the Office making any rejection ... or request.”

Applicant responded to the June 10, 2004 Restriction Requirement on December 19, 2004, and incurred a 90 day delay (calculated beginning the day after the September 10, 2004 3-month date of mailing of the Office Action); Applicant responded to the March 11, 2005 Office Action on July 11, 2005, and incurred a delay of 30 days (calculated beginning the day after the June 11, 2005 3-month date of mailing of the Office Action); Applicant responded to the May 18, 2006 Office Action on November 20, 2006, and incurred a delay of 94 days (calculated beginning the day after the August 18, 2006 3-month date of mailing of the Office Action); Applicant responded to the February 9, 2007 Office Action on August 8, 2007, and incurred a delay of 91 days (calculated beginning the day after the May 9, 2007 3-month date of mailing of the Office Action); Applicant responded to the October 19, 2007 Restriction Requirement on February 19, 2008, and incurred a 31 day delay (calculated beginning the day after the January 19, 2008 3-month date of mailing of the Office Action); and Applicant responded to the May 15, 2008 Office Action on September 15, 2008, and incurred a delay of 31 days (calculated beginning the day after the August 15, 2008 3-month date of mailing of the Office Action).

Hence, Applicant’s total delays encompassed by 37 C.F.R. § 1.704(b) is 367 days.

Regarding the Applicant’s delays under 37 C.F.R. § 1.704(c)(8), this section states that the “[s]ubmission of a supplemental reply ... after a reply has been filed ... [will result in reduction of] the period of adjustment set forth in § 1.703 ... by the number of days ... beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply ... was filed.”

Applicant responded to the July 11, 2005 Informal Amendment on October 28, 2005 and incurred a delay of 109 days (calculated beginning the day after the July 11, 2005 informal Amendment was submitted and ending the October 28, 2005 date of submission of the corrective Amendment).

Hence, Applicant’s total delays encompassed by 37 C.F.R. § 1.704(c)(8) is 109 days.

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Accordingly, the total delay attributable to Applicant under 37 C.F.R. § 1.704 is 476 days (367 days + 109 days).

D. Whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer

The '372 Patent is not subject to a Terminal Disclaimer.

E. The adjustment as specified in 37 C.F.R. § 1.703(f) to which the '372 Patent is entitled

The total amount of patent term adjustment as specified in 37 C.F.R. § 1.703(f) is the period of delay attributable to the USPTO under 37 C.F.R. §§ 1.703(a-e) less the amount of delay attributable to Applicant under 37 C.F.R. § 1.704. Accordingly, the '372 Patent is entitled to 914 days of the patent term adjustment. This number is derived from the sum of the delay attributable to the USPTO under §§ 1.703(a-e) (the sum of 450 days + 932 days + 8 days), minus the sum of the delay attributable to Applicant under § 1.704 (the sum of 90 days + 30 days + 109 days + 94 days + 91 days + 31 days + 31 days).

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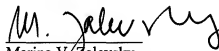
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II. CONCLUSION

In summary, Applicant respectfully requests the correction of the PTA from 464 days, indicated in the Issue Notification, to 914 days. Favorable consideration is respectfully requested.

Respectfully submitted,



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23373

CUSTOMER NUMBER

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APPENDIX

Patent Term Adjustment

Filing or 371(c) Date:	01-18-2002	USPTO Delay (PTO) Delay (days):	940
Issue Date of Patent:	08-11-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	476
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	464
USPTO Adjustment (days):	+0	Explanation Of Calculations 	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
07-22-2009	PTA 36 Months	482	
08-11-2009	Patent Issue Date Used in PTA Calculation		
07-06-2009	Dispatch to FDC	↑	
06-30-2009	Response to Reasons for Allowance	↑	
07-02-2009	Correspondence Address Change	↑	
07-01-2009	Application Is Considered Ready for Issue	↑	
06-30-2009	Issue Fee Payment Verified	↑	
06-30-2009	Issue Fee Payment Received	↑	
04-03-2009	Mail Notice of Allowance	↑	
03-26-2009	Document Verification	↑	
03-26-2009	Notice of Allowance Data Verification Completed	↑	
03-25-2009	Examiner's Amendment Communication	↑	
03-10-2009	Date Forwarded to Examiner	↑	
03-04-2009	Amendment after Final Rejection	↑	
01-23-2009	Mail Final Rejection (PTOL - 326)	8	
01-21-2009	Final Rejection	↑	
10-18-2008	Date Forwarded to Examiner	↑	
09-15-2008	Response after Non-Final Action		31
09-15-2008	Request for Extension of Time - Granted		↑
05-15-2008	Mail Non-Final Rejection		↑
05-12-2008	Non-Final Rejection		
03-04-2008	Date Forwarded to Examiner		
02-19-2008	Response to Election / Restriction Filed		31
02-19-2008	Request for Extension of Time - Granted		↑
10-19-2007	Mail Restriction Requirement		↑
10-15-2007	Requirement for Restriction / Election		
08-10-2007	Date Forwarded to Examiner		
08-10-2007	Date Forwarded to Examiner		
08-08-2007	Request for Continued Examination (RCE)		91
08-10-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		↑
08-08-2007	Request for Extension of Time - Granted		↑
08-08-2007	Workflow - Request for RCE - Begin		↑

02-09-2007	Mail Final Rejection (PTOL - 326)		↑
02-05-2007	Final Rejection		
11-28-2006	Date Forwarded to Examiner		
11-20-2006	Response after Non-Final Action		94
11-20-2006	Request for Extension of Time - Granted		↑
10-05-2006	Case Docketed to Examiner in GAU		↑
05-18-2006	Mail Non-Final Rejection		↑
05-15-2006	Non-Final Rejection		
03-07-2006	Date Forwarded to Examiner		
02-28-2006	Response to Election / Restriction Filed		
01-30-2006	Mail Restriction Requirement		
01-23-2006	Requirement for Restriction / Election		
11-03-2005	Date Forwarded to Examiner		
10-28-2005	Response after Non-Final Action		109
10-07-2005	Mail Notice of Informal or Non-Responsive Amendment		↑
07-18-2005	Date Forwarded to Examiner		↑
07-11-2005	Informal or Non-Responsive Amendment after Examiner Action		↑
07-11-2005	Response after Non-Final Action		30
07-11-2005	Request for Extension of Time - Granted		↑
04-05-2005	Case Docketed to Examiner In GAU		↑
03-11-2005	Mail Non-Final Rejection		↑
03-04-2005	Non-Final Rejection		
12-21-2004	Date Forwarded to Examiner		
12-09-2004	Response to Election / Restriction Filed		90
12-09-2004	Request for Extension of Time - Granted		↑
12-09-2004	Workflow incoming amendment IFW		↑
06-10-2004	Mail Restriction Requirement	450	
06-07-2004	Requirement for Restriction / Election		↑
04-16-2004	IFW TSS Processing by Tech Center Complete		↑
04-24-2002	Reference capture on IDS		↑
01-18-2002	Preliminary Amendment		↑
07-16-2003	Case Docketed to Examiner in GAU		↑
04-24-2002	Information Disclosure Statement (IDS) Filed		↑
04-24-2002	Information Disclosure Statement (IDS) Filed		↑
06-27-2002	Case Docketed to Examiner in GAU		↑
05-24-2002	Application Dispatched from OIPE		↑
05-23-2002	IFW Scan & PACR Auto Security Review		↑
05-03-2002	Notice of DO/EO Acceptance Mailed		↑
01-18-2002	Initial Exam Team nn		↑